

Appl. No. 09/890,921  
Atty. Docket No. CM-2038  
Amdt. dated August 6, 2003  
Reply to Office Action of 12/17/2002  
Customer No. 27752

### REMARKS

#### Application Amendments

Claims 1 and 15 have been amended as shown above. Support for the amendment regarding the composition being in the form of an emulsion can be found at page 16, lines 7-9. Support for the glass transition temperature can be found in the fact that the now claimed water swellable polymers have an inherent glass transition temperature of less than 0°C. Support for the amendment regarding the water dispersible polyacrylamide can be found at page 7, lines 7-9. The amendments, which were proposed in the Response to Final Office Action of February 12, 2003, have been repeated as the Examiner did not enter them. No new matter has been included in the amended claims.

#### The Examiner's Claim Rejection under 35 USC § 102(b)

Claims 1-5 are rejected under 35 USC 102(b) as anticipated by Jones et al. WO 96/03967. The Examiner, therefore, upholds his prior statement that "Jones discloses a cosmetic composition comprising a gelling agent and conditioning polymer. The gelling agent comprises a copolymer of methyl vinyl ether/maleic anhydride that is cross-linked with PVM/VA decadiene crosspolymer". The Examiner has further stated that the Jones composition further comprises a "hair fixative polymer that is a cationic copolymer of hydroxyethyl cellulose and diallyl dimethyl ammonium chloride known as Polyquaternium 4". The Examiner states that the composition of Jones "comprises from about 0.1% to about 10% by weight of a hair fixative polymer...the composition can be formulated as a leave-on hair cosmetic". Applicants respectfully traverse this rejection based on the amendments above and the remarks below.

Under 35 USC § 102(b), anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." MPEP2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed.Cir. 1989).

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The polyacrylamide polymers, as now claimed, are water dispersible polymers. The water dispersible polymers are distributed throughout the instant medium. The cationic hair fixative polymers of the Jones reference are water-soluble. The cationic hair fixative polymers are dissolved in the cited medium. The cationic hair fixative polymers of Jones are not the polyacrylamide polymers of the present invention. Additionally, in the present invention the polyacrylamide polymers, synthesized by reverse phase emulsion polymerization, are predispersed in a water immiscible solvent such as mineral oil which helps to facilitate water dispersibility of the polyacrylamide which provides mixtures with low levels of stickiness or tack.

While Applicants understand that skin and hair are related structures, the main purpose of the Jones composition, is to hold hair in a set style, while the presently claimed composition provides a water barrier over skin. To accomplish creation of a water barrier it is important to select polymeric materials that are water-swellable, having an inherent ability to retain water in order to increase volume in an aqueous environment. The now claimed water-swellable polymers have an inherent glass transition temperature of less than 0°C that would not provide adequate hairy styling benefits. One of skill in the art would understand that the Jones polymers would have to have glass transition temperatures greater than 0°C to accomplish the hair styling benefits that the reference teaches.

As Jones does not disclose each and every element of the present application, it cannot, as a matter of law, anticipate the present application. Accordingly, Claims 1-5 are novel over the prior art of record. Reconsideration and withdrawal of the rejection on this basis is requested.

#### The Examiner's Rejection under 35 USC § 103(a)

The Examiner has rejected claims 6 and 10-15 under 35 USC § 103(a) as being unpatentable over Jones et al (WO 96/03967).

In order to establish a *prima facie case* of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim

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limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure *In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)*.

The claims, as amended, require the use of cationic water-swellable polymers. Not only are the cationic water-swellable polymers not the polymers of Jones, but there would be no motivation, based on a reading of Jones, modify its components to produce the instant water-swellable polymers. In addition, the polyacrylamide polymers, as now claimed, are required to be water dispersible. There would there be a reason to expect from a reading of Jones that such components would function in a skin care composition. Lastly, Jones does not teach or suggest all the limitations of the current claims. Accordingly, Claims 6 and 10-15 are both novel and unobvious over the prior art of record.

### CONCLUSION

In light of the remarks and amendments, Applicants respectfully submit that the applied reference does not disclose or render obvious Claims 1-6 and 10-15. Accordingly, favorable reconsideration of Claims 1-6 and 10-15 is earnestly solicited in the form of a Notice of Allowance.

Should any issues impeding continuing examination of this Application remain, the Examiner is encouraged to contact the undersigned by telephone at the earliest possible date to achieve a timely resolution.

Respectfully submitted

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